No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CALIFORNIA ASSOCIATION FOR THE PRESERVATION OF GAMEFOWL,

Petitioner,

v.

COUNTY OF STANISLAUS, CALIFORNIA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kevin G. Little
Counsel of Record
LAW OFFICE OF KEVIN G. LITTLE
Post Office Box 8656
Fresno, California 93747
(559) 342-5800
kevin@kevinglittle.com
Counsel for Applicant California Association for the Preservation of Gamefowl

To The Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner California Association for the Protection of Gamefowl (CAAPG) hereby requests a 60-day extension of time within which to file a petition for writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit in this case, *California Association for the Preservation of Gamefowl v. Stanislaus County*, No. 23-15975. The Ninth Circuit issued an opinion on November 6, 2024. A petition for rehearing was denied on January 6, 2025, and the mandate issued on January 14, 2025. Copies of the opinion and order denying rehearing are attached as Appendix items A and B, respectively. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

No prior application has been made in this case. Petitioner submits that extraordinary circumstances exist for considering this application on short time because from February 28, 2025 through March 27, 2025, counsel for Petitioner was in a complex trial in the Los Angeles County Superior Court, *Gabriel Dominguez v. City of Los Angeles, et al.*, No. 18STCV00813, and that trial made it impossible for counsel to prepare and finalize the writ petition in time for it to be filed by April 7, 2025, or for an extension of time to be requested at least ten days before that filing deadline.

This case arises from a constitutional challenge to a Stanislaus County

ordinance enacted on November 16, 2017, that categorically prohibits non-commercial rooster ownership while exempting commercial operations. Petitioner filed suit on September 9, 2020, challenging the ordinance on multiple constitutional grounds.

The district court dismissed these claims, and the Ninth Circuit affirmed, holding primarily that facial challenges to the ordinance were time-barred under California's two-year statute of limitations because Petitioner's claims accrued solely upon enactment of the subject ordinance in 2017.

Petitioner submits that this case presents several exceptionally important questions warranting this Court's review. First and foremost, it squarely addresses a sharp circuit conflict regarding when the statute of limitations begins to run for facial constitutional challenges to laws that create continuing injuries through their enforcement. The Ninth Circuit's ruling that such challenges accrue once and for all upon enactment directly conflicts with decisions from the Fifth and Sixth Circuits and even with the Ninth Circuit's own precedent.

Specifically, in *Flynt v. Shimazu*, 940 F.3d 457 (9th Cir. 2019), the Ninth Circuit previously held that "the continued existence of a statute, even if enacted outside the limitations period, and the realistic threat of future enforcement is sufficient to render a facial challenge to the statute timely." *Id*. at 462. Similarly, in *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516 (6th Cir. 1997), the Sixth Circuit held that "[t]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations" because a plaintiff "suffered a new

deprivation of constitutional rights every day that [the challenged enactment] remained in effect." *Id*. at 521-522. As that court explained, if the contrary were true, "any statute older than two years would be insulated from challenge, even if its continued existence and enforcement cause additional wrongs." *Id*. at 522.

This Court's recent decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. ___ (2024), though not addressing Section 1983 claims directly, strongly supports Petitioner's view. There, the Court held that facial challenges under the Administrative Procedure Act and Federal Tort Claims Act accrue from the date of actual harm, not enactment. The logic underlying that holding—that injury, not mere enactment, triggers limitations periods—applies with equal force to constitutional challenges like those presented here.

The Ninth Circuit's rigid approach effectively immunizes laws from constitutional challenge after the initial limitations period expires—even when those laws continue to inflict new injuries daily. This approach cannot be reconciled with this Court's recognition that constitutional rights deserve meaningful protection through access to judicial review. *See Scheer v. Kelly*, 817 F.3d 1183, 1188 (9th Cir. 2016) (constitutional challenges should not be "insulated from review simply due to the passage of time since a law's enactment").

The case also presents substantive constitutional questions of exceptional importance. Petitioner contends that the ordinance effects a *per se* regulatory taking without just compensation by completely eliminating the property rights of non-commercial owners while exempting commercial operations. This selective

deprivation of property rights without compensation raises significant questions under this Court's takings jurisprudence, including *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021) and *Horne v. Dep't of Agric.*, 576 U.S. 350 (2015).

Additionally, Applicant argues that the ordinance's arbitrary distinction between commercial and non-commercial owners violates substantive due process and constitutes an unconstitutional bill of attainder by specifically targeting an identifiable group for punitive treatment without individual adjudication.

This case provides an excellent vehicle for addressing multiple significant constitutional questions that frequently arise in challenges to local regulation. The record clearly establishes both the categorical nature of the prohibition and its targeted impact on non-commercial owners. Clear guidance from this Court is needed on the constitutional limits of such regulation, particularly regarding when constitutional claims accrue for statute of limitations purposes and the level of protection afforded to personal property under the Takings Clause, as well as when an ostensibly regulatory ordinance constitutes an unconstitutional forfeiture and a bill of attainder.

Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel sufficient time to fully examine the constitutional issues presented, research the circuit conflicts, and prepare a comprehensive petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before April 7, 2025.

Wherefore, Applicant California Association for the Preservation of Gamefowl respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including June 6, 2025.

Dated: April 6, 2025

Respectfully submitted,

Kevin G. Little
Counsel of Record
LAW OFFICE OF KEVIN G. LITTLE
Post Office Box 8656
Fresno, California 93747
(559) 342-5800
kevin@kevinglittle.com
Counsel for Applicant California Association for the Preservation of Gamefowl

Appendix – Table of Contents

FILED

NOV 6 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA ASSOCIATION FOR THE PRESERVATION OF GAMEFOWL, Plaintiff-Appellant, v. COUNTY OF STANISLAUS, Defendant-Appellee.	No. 23-15975 D.C. No. 1:20-cv-01294-ADA-SAB MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Judge Ana I. de Alba, Presiding

Argued and Submitted October 23, 2024
San Francisco, California

Before: S.R. THOMAS, WARDLAW, and COLLINS, Circuit Judges.

The California Association for the Preservation of Gamefowl ("CAAPG") appeals the district court's Federal Rule of Civil Procedure 12(b)(6) dismissal of its 42 U.S.C. § 1983 action against the County of Stanislaus ("County") for enacting a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

county zoning ordinance outlawing the non-commercial ownership of roosters within certain areas of the County. We affirm.

Because the parties are familiar with the factual and procedural history of the case, we need not recount it here. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003). On appeal, CAAPG challenges only the district court's dismissal of its facial challenges to the zoning ordinance, including its regulatory takings claim, substantive due process claim, and forfeiture of a vested right claim.

I

The district court properly dismissed CAAPG's facial takings claim as time-barred. A statute of limitations defense may be raised in a Rule 12(b)(6) motion if the running of the statute is apparent on the face of the complaint. *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006).

The applicable limitations period for the takings claim runs from accrual of the claim, which occurs when the plaintiff has a complete and present cause of action, or in other words, when a plaintiff "knows or has reason to know of the actual injury." *Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir. 2019) (citation omitted). Here, the plaintiff had constructive notice of the enactment of the

ordinance, and also had actual notice as evidenced by its public comment on the proposal during the enactment process.

The federal statute that forms the basis of each of CAAPG's claims, 42 U.S.C. § 1983, does not have its own statute of limitations. *Butler v. Nat'l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014). Rather, actions brought under § 1983 are generally governed by the forum state's statute of limitations. *Id.* Under California law, the relevant statute is two years. Cal. Civ. Proc. Code § 335.1 (West 2003); *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004).

"A facial challenge involves 'a claim that the mere enactment of a statute constitutes a taking,' while an as-applied challenge involves 'a claim that the particular impact of a government action on a specific piece of property requires the payment of just compensation.'" *Ventura Mobilehome Cmtys. Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1051 (9th Cir. 2004) (quoting *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993)).

A facial takings claim accrues when the statute at issue is enacted. *See Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 956 (9th Cir. 2011) ("[T]he statute of limitations for facial challenges to an ordinance runs from the time of adoption." (citing *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1119 (9th Cir. 2010))). Unlike in other contexts, where the harm from a statute may be

continuing, or does not occur until the statute is enforced, "[i]n the takings context, the basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has effected a transfer of a property interest." *Levald*, 998 F.2d at 688.

Here, the zoning ordinance at issue was enacted on November 16, 2017, so CAAPG's facial takings claim accrued on November 16, 2017. *See Colony Cove Props.*, 640 F.3d at 956.

Thus, given California's two-year statute of limitations period, CAAPG's facial takings claim became time-barred after November 16, 2019. Because CAAPG did not file its complaint until September 9, 2020, CAAPG's facial takings claim is time-barred.

II

The district court also properly determined that CAAPG did not plead sufficient facts to support a substantive due process claim. "The Supreme Court has 'long eschewed . . . heightened [means-ends] scrutiny when addressing substantive due process challenges to government regulation' that does not impinge on fundamental rights." *Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir. 2008) (alterations in original) (citations omitted). "Accordingly, the 'irreducible minimum' of a substantive due process claim challenging land use action is failure

to advance any legitimate governmental purpose." *Id*. (citing *N. Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 484 (9th Cir. 2008)). Thus, CAAPG must meet an "exceedingly high burden" to show the County "behaved in a constitutionally arbitrary fashion." *Id*. (citation omitted).

CAAPG's first amended complaint does not contain allegations that the ordinance was constitutionally arbitrary and capricious, nor does it allege that it is not rationally related to a legitimate state interest. The district court properly determined that the substantive due process allegations were "nearly wholly conclusory and . . . insufficient to meet the high standard for a substantive due process challenge." The district court granted the plaintiff leave to amend to allege sufficient facts. However, the plaintiff elected to stand on its pleadings, which are not sufficient to state a claim.

III

The district court also correctly concluded that CAAPG failed to state a claim for forfeiture of a vested right. "The doctrine of vested rights . . . states that a property owner who, [1] in good faith reliance on a government permit, [2] has performed substantial work and incurred substantial liabilities has a vested right to . . . use the premises as the permit allows." *Cmtys. for a Better Env't v. S. Coast Air Quality Mgmt. Dist.*, 226 P.3d 985, 994 (Cal. 2010). "In contrast to a taking or

deprivation claim, the gravamen of a 'vested rights' claim is that the landowner has a right to a particular use of his land because he has relied to his detriment on a formal government promise (in the form of a permit) stating that he can develop that use." *Lakeview Dev. Corp. v. City of S. Lake Tahoe*, 915 F.2d 1290, 1295 (9th Cir. 1990).

The district court correctly concluded that CAAPG's forfeiture claim fails because CAAPG did not plead that there was a form of permit or its equivalent issued or that it performed substantial work in reliance on such a permit.

IV

In sum, the district court correctly dismissed the takings claim as time-barred and dismissed the substantive due process and vested rights causes of action for failure to state a claim. Given our resolution of the issues, we need not—and do not—reach any other issue presented by the parties.

AFFIRMED.

FILED

JAN 6 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA ASSOCIATION FOR THE PRESERVATION OF GAMEFOWL, Plaintiff-Appellant, v. STANISLAUS COUNTY, Defendant-Appellee.	No. 23-15975 D.C. No. 1:20-cv-01294-ADA-SAB Eastern District of California, Fresno ORDER

Before: S.R. THOMAS, WARDLAW, and COLLINS, Circuit Judges.

The panel unanimously voted to deny California Association for the Preservation of Game Fowl's ("CAAPG") petition for panel rehearing. Judges Wardlaw and Collins voted to deny CAAPG's petition for rehearing en banc and Judge Thomas recommended denying the petition. The full court has been advised of CAAPG's petition for rehearing en banc, and no judge of the court has requested a vote. Fed. R. App. P. 40.

CAAPG's petition for panel rehearing and rehearing en banc, Dkt. No. 41, is **DENIED**.